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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/603,179	06/26/2000	Ashok V. Joshi	CER-991476	3372

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CERAMATEC, INC.
2425 SOUTH 900 WEST
SALT LAKE CITY, UT 84119

EXAMINER

JASTRZAB, KRISANNE MARIE

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/603,179

Applicant(s)

JOSHI, ASHOK V.

Examiner

Krisanne Jastrzab

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 77-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 77-90 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 77-85 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schmid U.S. patent No. 4,583,548.

Schmid teaches disinfecting a skin surface utilizing a device having a halide-containing, solid electrolyte contained in a housing for placement against the skin and powered to generate sanitizing ozone. See column 1, lines 60-65, column 2, lines 8-20 and lines 35-42, column 6 and the claims.

Claims 77-82, 84 and 88 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Murphy et al., U.S. patent No. 5,972,196.

Murphy et al., teach electrochemical production of ozone for surface sterilization of items such as medical and dental instruments. The device includes a solid electrolyte, means for containing the electrolyte and directing the generated ozone to the surface to be treated, and a power source. See column 24, line 25 through column 28, line 40.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 89-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid.

Schmid teaches placement of the device on the skin surface and it would have been well within the purview of one of ordinary skill in the art to secure the device with an adhesive such as done with electrode placement for EKG measuring, because it would ensure precise placement of the device irrespective of patient movement.

Claims 86 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Schmid as applied to claims 77-85 above, and further in view of any one of Coetzer, U.S. patent No. 6,007,943, James et al., U.S. patent No. 5,766,789 or Seo et al., U.S. patent No. 4,020,246.

All three of Coetzer, James et al., and Seo et al., teach the recognized conventionality of beta alumina as the ion-conducting material of a solid electrolyte. See column 1, lines 46-53 of Coetzer, column 1, lines 23-24 and column 3, lines 58-61 of James et al., and column 1, lines 25-40 and line 60 through column 2, line 15 of Seo et al.

It would have been well within the purview of one of ordinary skill in the art to employ any well recognized solid electrolyte for that used in Schmid, including beta aluminas, their recognized conventionality supported in all three of the above references.

Claims 86-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al., as applied to claims 77-82, 84 and 88 above, and further in view of any one Coetzer, James et al., and Seo et al.

It would have been well within the purview of one of ordinary skill in the art to employ any well recognized solid electrolyte for that used in Murphy et al., including beta aluminas, their recognized conventionality supported in all three of the above references.

Response to Arguments

Applicant's arguments filed 11/15/2005 have been fully considered but they are not persuasive.

Applicant argues that Schmid is not applicable in meeting all of the claimed limitations in view of the newly amended language requiring an "unitary electrolyte component" because Schmid teaches the use of the electrode arrangement with an electrolyte gel applied to the skin, however, the Examiner would maintain that Schmid is still an applicable reference because Schmid does teach an "unitary electrolyte component" within the housing as claimed, and Applicant's claims have not excluded the presence of an additional electrolyte gel.

Applicant also argues that Murphy does not meet the claimed invention because of the teaching of pressurized ozone being directed at the surface to be treated instead of placement of the device as claimed, however, the Examiner would maintain that Murphy does place the device "adjacent" the surface, which merely requires that it be near such surface, and does properly meet the claimed invention.

Applicant finally argues that the obviousness rejections are not proper because the primary references are not properly applicable, however, the Examiner would disagree for the reasons cited above and maintain that the rejections are proper.

Conclusion

This is a RCE of applicant's earlier Application No. 09/603179. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL**

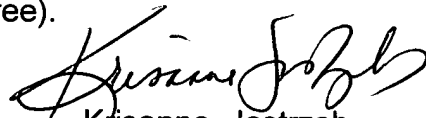
even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Wed. 6:30am-4:00pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rick Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Krisanne Jastrzab
Primary Examiner
Art Unit 1744

February 3, 2006